

Hibbs, David R NWK

From: Whetzel, Steven M NWK
Sent: Thursday, November 06, 2014 2:16 PM
To: Hibbs, David R NWK; Trier, Patrick H NWK
Subject: Google Earth Placemark: Black Tea.kmz (UNCLASSIFIED)
Attachments: photo 3.JPG; photo 4.JPG; Photo 5.jpg; Photo 1.jpg; photo 2.JPG; Black Tea.kmz

Classification: UNCLASSIFIED
Caveats: NONE

David:

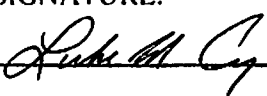
The KCC has received an application from Black Tea LLC to drill a new well in Logan County. KCC asked that I take a look at the site with them to determine if it is located below the OHWM of the Smoky Hill River. During the site visit Black Tea showed up and I advised him that I could not make a call at this time and that I would get back to him. I have worked with Patrick on this and Delia helped by providing a June 30, 2014 high water event photo of the site.

Before I complete a JD or contact Black Tea LLC, (they have already left me a phone message) I thought it would be good if you, Patrick, and myself discuss the jurisdictional limits of this location.

I am in today until 3:30 and then won't be back until next Wednesday.

Steve

Classification: UNCLASSIFIED
Caveats: NONE

CONVERSATION RECORD		TIME: 8:36	DATE: 7 Oct 2014
Type:	Visit	Conference	Telephone: X
		Incoming	Outgoing X
Location of Visit/Conference:			
NAME: Gerald Achatz		ORGANIZATION: Black Tea Oil	TELEPHONE NO. 620 282 9086
<p>SUBJECT: Black Tea Oil's proposed placement of fill material into the channel of a tributary to the Smoky Hill River to construct a pad for oil drilling and production activities. The project site is located in a tributary to the Smoky Hill River in Section 27, Township 14 south, Range 32 west, in Logan County, Kansas (38.8102 -100.8576)</p>			
<p>SUMMARY: The Corps (Luke Cory) returned a phone call to Gerald Achatz, Black Tea Oil regarding their proposed placement of fill into a stream channel to facilitate oil drilling and production activities. Based on the information provided, the Corps explained to Mr. Achatz that the work as described would require an individual DA permit. This would also involve issuing a public notice and if permitted would require mitigation for the impacted and lost stream channel. It was explained that if permitted the Corps would consider mitigation onsite or the applicant could purchase the mitigation from an in lieu fee provider and purchasing credits generally would speed the process up some. The Corps also explained that it normally takes at least 120 days to process an application like this. The timeframe seemed to be the biggest issue to Mr. Achatz. It was explained that if Black Tea could move the project to avoid any fill in the stream channel, then no permit would be required from the Corps. It was explained that the KS DWR might also require permits and he would need to contact that agency for that determination, but the Corps would coordinate with them if an application was received. Mr. Achatz wasn't sure if the project could be moved, but stated that he was going to contact Chris Neeley at the KCC and would get back with the Corps.</p>			
ACTION REQUIRED: Follow up with KCC			
NAME: Luke M. Cory		SIGNATURE: 	DATE: 7 October 2014
ACTION TAKEN:			
SIGNATURE:		TITLE:	DATE:

Hibbs, David R NWK

From: Cory, Luke M NWK
Sent: Wednesday, September 03, 2014 2:28 PM
To: Hibbs, David R NWK; Garcia.Delia@epamail.gov
Cc: Schumann, Thomas L NWK; Trier, Patrick H NWK; Frazier, Mark D NWK
Subject: Google Earth Placemark: August 28, 2014.kmz
Attachments: August 28, 2014.kmz

On August 28, 2014, the Corps conducted a site visit at the Black Tea Oil Company's oil drilling locations in Logan County, Kansas. The purpose of the field visit was a pre-application meeting organized by the Kansas Corporation Commission (KCC). The KCC was concerned about three oil drilling applications received from Black Tea Oil for proposed projects that would result in the placement of fill material into a tributary to the Smoky Hill River, Ladder Creek and the Smoky Hill River. During the course of the field visits, several recent and/or undocumented fill activities were also observed.

Site #1 (Google Earth Link Photos 36-45), is located along the left bank of the Smoky Hill River (38.8063 -100.8934). At Site #1 the oil well is located on the left bank, above the river, but the oil drilling pad extended out into the Smoky Hill River channel. This is unauthorized fill activity that has occurred since the Corps notified Black Tea Oil of the previously unauthorized work and of Section 404 permit requirements to place fill into waters of the U.S. The KCC explained that after the recent floods, the oil drilling pad at Site #1 was damaged. When the pad was rebuilt, the fill was raised up and extend out into the channel.

Site #2 (Google Earth Link Photos 48-56) is located along the right bank of the Smoky Hill River (38.8066 -100.8749). At this location the oil rig is located on top of the bank, but the fill for the pad extended out into the Smoky Hill River channel. This is another unauthorized fill activity that occurred since the Corps notified Black Tea Oil of the unauthorized work and permit requirements to place fill into waters of the U.S.

Site #3 (Google Earth Link Photos 59-61) is located along the right bank of the Smoky Hill River (38.8063 -100.8683) and is a potential unauthorized fill site. Due to limited time, this site was photographed from a distance and will have to be investigated at a later date. At this location there is a recently constructed windrow of earthen fill pushed up approximately 2' high, extending all the way across the Smoky Hill River channel. It appeared that a pipeline was buried to carry oil from the Site #3 oil well. Earthen fill was pushed up in the channel over the pipeline route. No attempt was ever made during the pipeline installation to restore the existing ground contours.

Site #4 is a tributary to the Smoky Hill River (Google Earth Link Photos 8-17) where a bend in the channel was filled to create an access road and staging area for crushing rock for road maintenance. At this location the channel bend was completely filled and as the result of a recent flood, road maintenance material (quarried gravel) washed into the channel downstream from the unauthorized fill site forming gravel bars. No gravel bars exist above this unauthorized fill site. In reviewing Google Earth timelines, it appears that this fill has been in place for a number of years (possible back to 2008). It does appear that the work at this site is ongoing.

Site #5 is located on another tributary to the Smoky Hill River (Google Earth Link Photo 62). At the time of this site visit, pad construction and oil drilling activities were ongoing. Site #5 was inspected from a distance (38.8951 -101.0977), but the work appeared to be impacting a jurisdictional water. At the time the Corps did not have access to this property or know who the operator was. In a later follow up investigation, KCC reviewed their files

and determined that this is another Black Tea Oil drilling location. Based on KCC maps, this site appears to be located in a jurisdictional water of the U.S.

Site #6 is a proposed drilling location that was flagged in the active channel of the Smoky Hill River (Google Earth Link Photos 63-74). After some discussion, Black Tea said they would move this location out of the channel and on to the floodplain. During this meeting, the construction contractor arrived crossing the river in a bulldozer. The Corps identified the riverbanks and explained Section 404 Regulatory jurisdiction. The contractor stated that he thought he could construct the drilling pad without getting any fill into the river. Black Tea indicated that they needed to construct a road crossing to access the Site #6, drilling location (Google Earth Link Photos 63-65). They stated that the crossing is required to access the site for oil well operation activities. They also said that they wanted to get started with construction crossing right away. The Corps informed Black Tea that a Section 404 permit would be required for the road crossing. It was explained that this site is within the prime range of the Lesser Prairie Chicken, therefore all fills in jurisdictional water, including minor road crossing or pipeline crossings would require prior authorization from the Corps. To comply with the Endangered Species Act, the Corps would have to complete consultation with the FWS before a Section 404 permit could be issued.

During these site visits the Corps met onsite with Geral Achatz, Achatz Consulting Services, well site supervisor for Black Tea Oil Company. Mr. Achatz was informed about potential permit requirement for Black Tea's proposed drilling sites and road crossing that would result in the placement of fill material into waters of the U.S. The Corps also explained that consultation with the FWS would be required before Section 404 authorization could be granted. Mr. Achatz indicated that he would apply for the necessary permits but as of September 3rd, Black Tea has not contacted the Corps to request any permits.

It is the hope that as a result of the KCC scheduling the meeting between the Corps and Black Tea, at least three potential unauthorized fill activities may have been avoided. This site visit also resulted in the identification of recent unauthorized work done by Black Tea in waters of the U.S. The Corps believes this would be a good case for an EPA enforcement action. With recent rains the conditions have changed so much that jurisdictional waters are apparent. There is also an influx of hydrophetic vegetation (cattails, bulrushes) and as a result many of the unauthorized fill sites and proposed fill sites would likely be located within abutting wetlands of the Smoky Hill River a RPW. If EPA is interested in accepting this as an enforcement case, I would recommend the Corps organize a team (with EPA invited to participate) to conduct a detailed investigation of the unauthorized fill activities, including wetland delineations of the unauthorized fill sites. The Corps level of investigation of the unauthorized fill sites would depend on whether we are preparing an enforcement case or simply preparing to accept an application after-the-fact. It is also suggested that the EPA talk with the KCC regarding Black Tea Oil and their history of non compliance with State regulations. This would provide a better understanding of the day to day operation of this company and their repeated failure to comply with the various permit requirements. A recommended point of contact for KCC would be Chris Neeley, (785) 625-0556.

All of these recent drilling locations and the unauthorized fill sites are located within the prime range of the Lesser Prairie Chicken, a Federally listed Threatened species. It is the understanding of the Corps that consultation with the U.S. Fish and Wildlife Service (FWS) would be required for permitting of the fill activities that are located in waters of the U.S.

~~Google Earth streams the world over wired and wireless networks enabling users to virtually go anywhere on the planet and see places in photographic detail. This is not like any map you have ever seen. This is a 3D model of the real world, based on real satellite images~~